

1 \

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT

7

8

FOR THE NORTHERN DISTRICT OF CALIFORNIA

9

IN RE: DITROPAN XL ANTITRUST  
LITIGATION

10

CASE NO. M:06-CV-01761-JSW

11

This Order Relates to:

12

ALL CASES

13

14

MDL No. 1761

**PRETRIAL ORDER NO. 1:  
PRACTICE AND PROCEDURE  
ORDER UPON TRANSFER**

15

1. SCOPE OF ORDER: This Order shall govern the practice and procedure in  
those actions transferred to this Court by the Judicial Panel on Multidistrict Litigation (“the  
Panel”) pursuant to its Transfer Order of April 24, 2006, any “tag-along” actions transferred to  
this Court by the Panel pursuant to the Panel’s Rules of Procedure, and all related actions that  
have been or will be originally filed in, transferred to, or removed to this Court and assigned  
thereto.

21

2. CONSOLIDATION: The actions described in paragraph 1 of this Order are  
consolidated for pretrial purposes. Any “tag-along actions” later filed in, removed to, or  
transferred to this Court, or directly filed in the Northern District of California, will  
automatically be consolidated with this action without the necessity of future motions or orders.  
This consolidation does not constitute a determination that this actions should be consolidated  
for trial, nor does it have the effect of making any person, firm or corporation a party to any  
action in which he, she or it has not been named, served or added as such in accordance with the  
Federal Rules of Civil Procedure. If any action is filed in, removed to, or transferred to this

For the Northern District of California

1 Court after the date of this Order, the existing parties shall meet and confer and  
2 promptly inform the Court whether the new action is an indirect or direct purchaser action and  
3 whether the new action should be consolidated for all purposes with the Indirect Purchaser  
4 Action or the Direct Purchaser Action described below.

5 a. The “Indirect Purchaser” actions pending in this Court are hereby  
6 consolidated for *all purposes* pursuant to Federal Rule of Civil Procedure 42(a). The  
7 consolidated Indirect Purchaser actions, together with all other Indirect Purchaser actions that  
8 may subsequently be coordinated or consolidated pursuant to the provisions of this Order, shall  
9 be collectively referred to as the “Indirect Purchaser Action.”

10 b. The “Direct Purchaser” actions pending in this Court are hereby  
11 consolidated for *all purposes* pursuant to Federal Rule of Civil Procedure 42(a). The  
12 consolidated Direct Purchaser actions, together with all other Direct Purchaser actions that may  
13 subsequently be coordinated or consolidated pursuant to the provisions of this Order, shall be  
14 collectively referred to as the “Direct Purchaser Action.”

15 3. GUIDELINES: The Court will be guided by the *Manual for Complex Litigation, Fourth* (“MCL 4th”) (2004 ed.), as well as by the Civil Local Rules of Court for the United  
16 States District Court for the Northern District of California (“the Civil Local Rules”) and this  
17 Court’s Standing Orders. Counsel are directed to familiarize themselves with the MCL 4th, the  
18 Civil Local Rules, and this Court’s Standing Orders.

19 4. MASTER DOCKET FILE: The Clerk of the Court will maintain a master docket  
20 case file under the style “In re Ditropan XL Antitrust Litigation” and the identification “MDL  
21 No. 1761.” When a pleading is intended to apply to all actions, this shall be indicated by the  
22 words: “This Document Relates to All Cases.” When a pleading is intended to apply to just the  
23 Indirect Purchaser Action or the Direct Purchaser Action, either “Indirect Purchaser Action” or  
24 the “Direct Purchaser Action” shall appear immediately after the words “This Document Relates  
25 to.”

26 5. FILING: This case is subject to Electronic Case Filing (“ECF”), pursuant to  
27 General Order 45, Section VI of which requires that all documents in such a case be filed

1 electronically. General Order 45 provides at Section IV (A) that "Each attorney of record is  
2 obligated to become an ECF User and be assigned a user ID and password for access to the  
3 system upon designation of the action as being subject to ECF." If he or she has not already  
4 done so, counsel shall register forthwith as an ECF User and be issued an ECF User ID and  
5 password. Forms and instructions can be found on the Court's Website at  
6 ecf.cand.uscourts.gov.

7 All documents shall be e-filed in the master file, 06-1761. Documents that pertain to  
8 only the "Indirect Purchaser Action" or the "Direct Purchaser Action" shall *also* be e-filed in the  
9 respective consolidated action to which the document pertains.

10 6. DOCKETING NEW CASES: When an action that properly belongs as part of  
11 "In re Ditropan XL Antitrust Litigation" is filed after the date of this Order in the Northern  
12 District of California or is transferred here from another court, the Clerk of this Court shall:

13 a. File a copy of this Order in the separate file for such action;  
14 b. Make an appropriate entry on the master docket sheet;  
15 c. Mail to the attorneys for the plaintiff in the newly filed or transferred case  
16 a copy of this Order;  
17 d. Upon the first appearance of any new defendant, mail to the attorneys for  
18 the defendant in such newly filed or transferred cases a copy of this  
19 Order.

20 7. ORGANIZATION OF COUNSEL AND CASES:

21 a. The cases consolidated into the Indirect Purchaser Action are listed in  
22 Schedule A. Schedule A shall be amended to include any action(s) brought on behalf of a  
23 proposed class of indirect purchasers of Ditropan XL subsequently filed in, or transferred to, this  
24 Court.

25 b. The cases consolidated into the Direct Purchaser Action are listed in  
26 Schedule B. Schedule B shall be amended to include any action(s) brought on behalf of a  
27 proposed class of direct purchasers of Ditropan XL subsequently filed in, or transferred to, this  
28 Court.

1 c. Pursuant to the Manual for Complex Litigation, appointment of Lead  
2 Counsel is appropriate for the prompt and efficient resolution of this litigation. Accordingly, the  
3 Court appoints the following counsel:

Timothy J. Becker  
Zimmerman Reed, PLLP  
651 Nicollet Mall  
Suite 501  
Minneapolis, MN 55402

Kenneth A. Wexler  
Wexler Toriseva Wallace LLP  
One North LaSalle Street  
Suite 2000  
Chicago, IL 60602

Jeffrey Kodroff  
Spector, Roseman & Kodroff, P.C.  
1818 Market Street, Suite 2500  
Philadelphia, PA 19103

ii) The Court designates the following attorneys to act as Co-Lead Counsel on behalf of all plaintiffs in the consolidated Direct Purchaser Action, with all the responsibilities hereinafter described:

Tomas Sobol  
Hagens Berman Sobol Shapiro LLP  
One Main Street  
4th Floor  
Cambridge, MA 02142

Dianne M. Nast  
Roda Nast, P.C.  
801 Estelle Drive  
Lancaster, PA 17601

1 e. Co-Lead Counsel in the Indirect Purchaser Action and the Direct  
2 Purchaser Action shall have the following responsibilities and duties, to be carried out either  
3 personally or through designated counsel, with respect to the specific actions for which they are  
4 Co-Lead Counsel: (1) to initiate, brief and argue motions and prepare, serve and file opposing  
5 briefs in proceedings initiated by other parties; (2) to coordinate plaintiffs' pretrial activities and  
6 plan for trial; (3) to negotiate with defense counsel with respect to settlement and other matters;  
7 (4) to call meetings of plaintiffs' counsel when appropriate; (5) to conduct all pre-trial and post-  
8 trial proceedings; (6) to consult with and employ experts; (7) to require counsel to keep a daily  
9 record of time spent and expenses incurred in connection with this litigation and to serve at least  
10 bi-monthly on Co-Lead Counsel reports setting forth time and expenses, billing rates and such  
11 other pertinent data as may be required by Co-Lead Counsel; (8) to perform such other duties  
12 and undertake such other responsibilities as they deem necessary or desirable in connection with  
13 the prosecution of their respective actions; and (9) to coordinate and communicate with  
14 plaintiffs' and defendants' counsel and the Court, with respect to matters addressed in this  
15 paragraph.

16 f. No substantive motion, request for discovery, or other pretrial  
17 proceedings shall be initiated or filed by a plaintiff except through Co-Lead Counsel in the  
18 Indirect Purchaser Action or the Direct Purchaser Action, or with leave of Court.

19       8.     DISCOVERY: Pending the initial conference and further orders of this Court, all  
20 outstanding discovery proceedings are stayed and no further discovery shall be initiated. The  
21 Court appoints the following firm as Chair of Discovery for the Indirect Purchaser Action who  
22 shall be responsible, together with all Indirect Purchaser Co-Lead Counsel, for all obligations set  
23 forth in the Manual for Complex Litigation related to the effective coordination of discovery in  
24 this Coordinated Action and also as the document repository for Indirect Purchaser Plaintiffs:

25 Jason J. Thompson  
26 Charfoos & Christensen, P.C.  
5510 Woodward Avenue  
Detroit, MI 48202

27 9. APPEARANCES: Counsel who appeared in a transferor court prior to transfer  
28 need not enter an additional appearance before this Court. Moreover, attorneys admitted to

1 practice and in good standing in any United States District Court are admitted *pro hac vice* in  
2 this litigation, and the requirements of the Northern District of California Local Rule 11-3 are  
3 waived. Association of local counsel is not required.

4 10. INITIAL CASE MANAGEMENT CONFERENCE: Matters relating to pretrial  
5 and discovery proceedings in this cases will be addressed at an initial Case Management  
6 Conference to be held on Friday, October 27, 2006 at 1:30 p.m. before Judge Jeffrey S. White in  
7 Courtroom 2, 17th Floor, United States Courthouse, 450 Golden Gate Avenue, San Francisco,  
8 California. Counsel shall be prepared at the conference to suggest procedures that will facilitate  
9 the expeditious, economical, and just resolution of this litigation. In particular, Defendants and  
10 Co-Lead Counsel in the Indirect Purchaser Action and the Direct Purchaser Action shall meet  
11 and confer and work in good faith to address the following issues and either make an agreed-  
12 upon proposal to the Court or be in a position to identify areas of agreement and disagreement:

- 13 a. timing for filing consolidated amended complaints in the Indirect  
14 Purchaser Action;
- 15 b. timing for Defendants' responses to the consolidated amended complaints  
16 in both the Indirect Purchaser Action and the Direct Purchaser Action;
- 17 c. the scope and timing of discovery;
- 18 d. dispositive motion procedures and schedule;
- 19 e. a proposed protective order; and
- 20 f. other issues that may affect the efficient progress and resolution of these  
21 actions.

22 The parties shall submit to the Court by Friday, October 20, 2006, a brief written  
23 statement indicating their preliminary understanding of the facts involved in the litigation and  
24 the critical factual and legal issues, as well as a summary of the parties' positions on the items  
25  
26  
27  
28

///

///

///

///

1 listed above. These statements will not be binding, will not waive claims or defenses, and may  
2 not be offered in evidence against a party in later proceedings.

3 **IT IS SO ORDERED.**

4  
5 Dated: September 11, 2006

*Jeffrey S. White*  
6 JEFFREY S. WHITE  
7 UNITED STATES DISTRICT JUDGE  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## **Schedule A** (Indirect Purchaser Action)

3 1. *City of Fargo Health Trust Fund. v. Alza Corp.*, No. C05-04684 JSW

4 2. *Local 28 Sheet Metal Workers v. Alza Corp.*, No. C05-04758 JSW

5 3. *United Food and Commercial Workers Union and Employers Midwest Health Benefits*  
6 *Fund v. Alza Corp.*, No. C06-00314 JSW

7 4. *Plumbers and Pipefitters Local 572 Health and Welfare Fund v. Alza Corp.*, No C06-  
8 01074 JSW

9 5. *Teamsters Local No. 35 Health Plan v. Alza Corp.*, No. C06-1362 JSW

10 6. *Jabo's Pharmacy, Inc. v. Johnson & Johson, et al.*, No C06-2390

## **Schedule B**

(Direct Purchaser Action)

1. *American Sales Co., Inc. v. Alza Corp.*, No. C06-02937 JSW
2. *SAJ Distributors, Inc., et al. v. Alza Corp.*, No. C06-03760 JSW

## United States District Court